

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ULISES ALVAREZ, individually and  
on behalf of all other similarly situated  
persons,

Plaintiffs,

v.

UPLAND VINEYARDS L.L.C.,

Defendant.

NO: 1:15-CV-3185-TOR

ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

BEFORE THE COURT is Plaintiffs' Motion for Final Approval of Class Action Settlement (ECF No. 10). A Final Fairness Hearing was originally scheduled for June 14, 2016; however, no class member filed a written statement objecting to the proposed class settlement. As a result, this Court cancelled the Final Fairness Hearing as unnecessary.

The Court—having reviewed the briefing, record, and files therein—is fully informed and grants final approval of the class action settlement.

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## BACKGROUND

Plaintiffs, Ulises Alvarez and other migrant and seasonal farmworkers formerly employed by Upland Vineyards, commenced this action on October 20, 2015. ECF No. 1. Plaintiffs alleged, *inter alia*, that they were discharged in June 2014 in retaliation for exercising their workplace rights. Specifically, Plaintiffs alleged violations of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 *et seq.*, Washington's Little Norris La Guardia Act, RCW 49.32.020, and state wage laws. *Id.*

On February 29, 2016, the Court provisionally certified the proposed class and granted preliminary approval of the class action settlement and notice plan. ECF No. 7. Following entry of this Order and in conformance therewith, class counsel provided notice to all class members. *See* ECF Nos. 11; 12.

In the instant motion, Plaintiffs seek final certification of the farm worker class, final approval of the Settlement Agreement, and entry of final judgment including the payment of attorney fees and expenses. ECF No. 10.

The Court enters the following findings of fact and conclusions of law:

### A. Jurisdiction

1. The Court has subject matter jurisdiction over the claims in this case and personal jurisdiction over the Parties, including all Class Members, pursuant to

1 28 U.S.C. § 1331 (federal questions), 29 U.S.C. § 1854 (AWPA), and  
2 28 U.S.C. § 1367 (supplemental jurisdiction).

3 **B. Settlement Class**

4 2. The Court provisionally certified for settlement purposes under  
5 Federal Rule of Civil Procedure 23(b)(3) the Settlement Class consisting of the  
6 following: All migrant and seasonal farm workers employed as cherry pickers at  
7 Upland in 2014 whose employment was terminated on July 10, 2014. ECF No. 13-  
8 14.

9 3. For the purposes of final settlement, the Court finds that Plaintiffs  
10 have demonstrated that the Federal Rules of Civil Procedure 23(a) factors are met  
11 as follows:

12 (a) The Settlement Class consists of 67 individual workers and is so  
13 numerous that joinder of all members is impracticable;

14 (b) There are questions of law and fact common to the Settlement Class  
15 because the same alleged conduct of Upland forms the basis of the claims,  
16 including whether Upland or its agents (1) discharged workers who engaged in  
17 concerted activity during the 2014 cherry harvest; (2) retaliated against workers  
18 after they joined together to protect their workplace rights during the 2014 cherry  
19 harvest; (3) breached the working arrangement during the 2014 cherry harvest by  
20 unilaterally lowering the promised piece rate; (4) failed to provide rest breaks for

1 Plaintiffs who performed piece-rate work during the 2014 cherry harvest or at any  
2 time during the 2012 or 2013 seasons; and (5) failed to compensate missed rest  
3 breaks for Plaintiffs who performed the piece-rate work during the 2014 cherry  
4 harvest or at any time during the 2012 and 2013 season;

5 (c) Plaintiff Alvarez's claims for relief are typical of the claims of his  
6 fellow class members as they involve the same injury and same course of  
7 conduct—retaliatory discharge and deprivation of workplace rights and  
8 compensation and there are no defenses unique to Plaintiff Alvarez;

9 (d) The representative parties, Plaintiff Alvarez and his attorneys with  
10 Columbia Legal Services, have fairly and adequately protected the interests of the  
11 Settlement Class; have no conflicts of interest with Settlement Class members as  
12 demonstrated through the high return of claims and no objections or requests for  
13 exclusion; and have vigorously prosecuted the action through informal discovery,  
14 negotiations, and the class notification process.

15 4. For the purposes of settlement, the Court finds that Plaintiff has  
16 demonstrated that the requirements of Federal Rules of Civil Procedure 23(b)(3)  
17 are also met as follows:

18 (a) Questions of law and fact common to all class members  
19 predominate over individualized questions because as detailed in paragraph 3(b)  
20 the farm worker class—farm workers who were all allegedly discharged on June

1 10, 2014, for asserting their workplace rights and who were all allegedly deprived  
2 of workplace rights—is sufficiently cohesive to warrant adjudication by  
3 representation;

4 (b) Class adjudication is superior to separate individual actions  
5 because (i) the class members do not have a significant interest in litigating their  
6 claims separately because the value of each class member’s claim is relatively  
7 small and the cost of litigating the claims would likely exceed the value of  
8 recovery as demonstrated by the participation in the claims process; (ii) there is no  
9 existing litigation concerning the same subject-matter; (iii) the parties agree  
10 concentration of the litigation in a single forum avoids risks of inconsistent or  
11 varying adjudications; and (iv) it is feasible to manage the case as a class action  
12 again as demonstrated through the settlement and claims process.

13 5. The Court finds the Settlement Class should be finally certified for the  
14 purposes of settlement.

15 **C. Notice to Settlement Class and Opportunity to Opt Out or Object**

16 6. As demonstrated by the declarations of Lori Isley and Elvia F. Bueno  
17 and the attached exhibits, *see* ECF Nos. 11-13, class counsel have provided notice  
18 to Settlement Class Members in the manner and form approved by the Order  
19 Granting Preliminary Approval and as set forth in the Settlement Agreement. The  
20 Court finds that the notice was the best practicable under the circumstances and

1 complied fully with the Order Granting Preliminary Approval, the Federal Rules of  
2 Civil Procedure, and the constitutional requirements of due process under federal  
3 and state law.

4 7. Class counsel held a meeting for class members. During the meeting,  
5 class members had a full opportunity to ask questions about the terms and  
6 conditions of the proposed settlement and were informed of their right to exclude  
7 themselves from the class, to object to the proposed settlement, and to appear at the  
8 Final Fairness Hearing.

9 8. Class members had a full and informed opportunity to exclude  
10 themselves from the class and otherwise opt out of this lawsuit. No individuals  
11 chose to exclude themselves from the class.

12 **D. Fairness and Adequacy of the Settlement Agreement**

13 9. The Court has determined that a full opportunity has been given to  
14 class members to be heard in favor of or and opposition to the terms of the  
15 Settlement Agreement, to Class Counsel's request for attorney fees, and to  
16 otherwise file notice of the intent to appear at the Fairness Hearing as originally  
17 scheduled.

18 10. No class member filed any objection to the settlement or to Class  
19 Counsel's request for attorney fees by the May 10, 2016, deadline for doing so.  
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1           11. Upland has provided the Notice of Rights in English and Spanish  
2 (ECF No. 6-2) to all new hires in 2016 as required by the Settlement Agreement.

3           12. The Court has carefully considered all the papers, evidence, and  
4 arguments before it and has made its independent judgment that (1) while class  
5 members' claims are strong, they face the risk of protracted litigation, the  
6 associated expense, and the difficulty of maintaining contact over the duration of  
7 the litigation; (2) the amount offered in settlement is fair and reasonable; (3) the  
8 settlement negotiations were significant, conducted at arm's-length by experienced  
9 counsel on both sides, and involved substantial informal discovery; (4) experienced  
10 counsel for the parties support the settlement; and (5) 85% of the class has  
11 responded and no responding class member has objected to the settlement or  
12 requested to be excluded therefrom. *See In re Online DVD-Rental Antitrust Litig.*,  
13 7790 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*,  
14 361 F.3d 566, 575 (9th Cir. 2004)).

15           13. Having considered the foregoing, as well as the lack of any  
16 objections; the costs, risks and delays of continued litigation versus the benefits  
17 provided by the settlement; and this Court's knowledge of this Action, the Court  
18 finds and concludes that the settlement is in the best interest of the class and is fair,  
19 reasonable, and adequate as to all class members.

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1       **E. Attorney Fees and Costs**

2           14. The Court has considered the request of Class Counsel for an award of  
3 attorney fees and costs, included in the proposed Settlement Agreement.

4           15. The Court finds that Class Counsel should receive an award of  
5 reasonable attorney fees and costs in the amount of \$16,300. This compromised  
6 amount is reasonable based upon the time and effort expended, the experience of  
7 counsel, the costs of class notice, and the results obtained.

8           **ACCORDINGLY, IT IS SO ORDERED:**

9           1. Plaintiff's Motion for Final Approval of Class Action Settlement  
10 (ECF No. 10) is **GRANTED**.

11          2. The terms of the Settlement Agreement (ECF No. 6) are granted final  
12 approval, are confirmed as fair, reasonable and adequate, are adopted by this Court  
13 as though fully set forth herein, and are binding on Plaintiff, class members, and  
14 Upland Vineyards, LLC.

15          2. Pursuant to Fed. R. Civ. P. 23(b)(3) and for the purposes of  
16 settlement, the Court makes final its provisional certification of the Settlement  
17 Class: All migrant and seasonal farm workers employed as cherry pickers at  
18 Upland in 2014 whose employment was terminated on July 10, 2014.

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1           3.     The Court designates Plaintiff Alvarez as Class Representative.

2           4.     The Court appoints Lori Jordan Isley and Joachim Morrison of  
3 Columbia Legal Services (CLS) as Class Counsel. David Solis is no longer with  
4 Columbia Legal Services and withdrew as counsel pending final approval.

5           5.     The Court appoints CLS as Settlement Administrator.

6           6.     Upland shall pay \$90,000 to CLS no later than three business days  
7 from the expiration of the time for filing an appeal.

8           7.     CLS shall disseminate a Notice of Right to Class Action Settlement  
9 Payment, *see* ECF No. 10-1 at 11-13, to each class member who returned a claim  
10 form, advising him or her of the payment amount of \$1,175.44, with the exception  
11 of class member Roque who will be advised of an additional \$500 payment. CLS  
12 shall pay Class Representative Alvarez an additional \$6,200 for his non-wage  
13 compensatory/general damages.

14          8.     CLS shall include in the Notice of Right to Class Action Settlement an  
15 in-person distribution date in Yakima, which shall occur within 50 days after entry  
16 of this Order. Class members shall have the option of participating in the in-person  
17 distribution or receiving their check by certified mail, return receipt requested,  
18 restricted delivery (which requires identification) at the address provided on their  
19 claim form following the in-person distribution.

1           9.     No later than 80 calendar days after entry of this Order, Class Counsel  
2 shall file a report or declaration that they have complied with paragraphs 7 and 8 of  
3 this Order and provide an accounting of settlement payments.

4           10.    The Court awards \$16,300 to Class Counsel for attorney fees and  
5 costs.

6           11.    Upland shall provide the Notice of Rights (ECF No. 6-2) in English  
7 and Spanish to each of its employees on the company payroll on the date of this  
8 Order and on the first pay day following entry of this Order.

9           12.    Upland shall continue to provide a copy of the Notice of Rights in  
10 English and Spanish to all new hires as set forth in the Settlement Agreement  
11 following entry of this order through the end of 2016.

12           13.    Upland shall post a copy of the Notice of Rights in English and  
13 Spanish at all locations where Upland provides other written notices required by  
14 law no later than the date this Order is entered and continuing for one year  
15 following its entry.

16           14.    Upon payment in paragraph 6 of this Order, the claims of Plaintiff and  
17 class members shall be released pursuant to paragraphs 20 and 23 of the Settlement  
18 Agreement (ECF No. 6).

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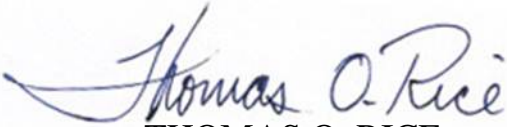
1           15.   Without affecting the finality of this Order in any way, the Court  
2 retains jurisdiction over the claims against Defendants for purposes of resolving  
3 any disputes that may arise under the Settlement Agreement and this Order.

4           16.   The District Court Executive is directed to enter this Order and  
5 provide copies to counsel.

6           **DATED** June 22, 2016.



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THOMAS O. RICE  
Chief United States District Judge